

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

TRAVIS JUSTIN CUELLAR,

Petitioner,

v.

BROOK BERGMAN, Madera County District
Attorney,

Respondent.

Case No. 1:20-cv-00579-NONE-SKO (HC)

FINDINGS AND RECOMMENDATION TO
DISMISS PETITION AS DUPLICATIVE
AND SUCCESSIVE

[TEN DAY OBJECTION PERIOD]

Petitioner is a state prisoner proceeding *pro se*. He filed the instant action on April 23, 2020, as a civil rights complaint. (Doc. 1.) Petitioner’s allegations relate entirely to his conviction in a state court criminal case, including the prosecutor’s alleged facilitating of “eavesdropping by sending a prosecuting agent to eav[e]sdrop on a private attorney-client meeting in an in custody holding area in the Madera Superior Courthouse.” (*Id.* at 5.) Petitioner alleges that this eavesdropping resulted in Respondent “obtain[ing] incriminating information, resulting in a conviction of Petitioner.” (*Id.*) Further, Petitioner requests that the Court “consider the plaintiff’s sentence time served based on the constitutional violations suffered” and “reverse conviction and/or dismiss charges.” (*Id.*) Because Petitioner’s claims sound in habeas, the complaint was redesignated as a habeas action on April 29, 2020. (Doc. 3.)

1 Petitioner filed a prior habeas action challenging the same conviction and raising the same
2 complaints in Cuellar v. People of the State of California, Case No. 20-cv-00427-AWI-SKO. In
3 that action, the Court has recommended the petition be dismissed without prejudice for failure to
4 exhaust state remedies (Doc. 4.) Because the instant petition is duplicative and successive of the
5 prior petition, this action must be dismissed. See 28 U.S.C. § 2244(b)(1).

6 **RECOMMENDATION**

7 The Court HEREBY RECOMMENDS that the petition be dismissed as duplicative and
8 successive.

9 This Findings and Recommendation is submitted to the United States District Court
10 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and
11 Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of
12 California. Within ten days after being served with a copy, Petitioner may file written objections
13 with the Court. Such a document should be captioned "Objections to Magistrate Judge's
14 Findings and Recommendation." The Court will then review the Magistrate Judge's ruling
15 pursuant to 28 U.S.C. § 636 (b)(1)(C). Petitioner is advised that failure to file objections within
16 the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
17 F.2d 1153 (9th Cir. 1991).

18
19 IT IS SO ORDERED.

20 Dated: May 4, 2020

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE